

THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

TATU WADESISI	)	CASE NO. 1:22-cv-00422-JG
	)	
Plaintiff	)	JUDGE JAMES GWIN
	)	
vs.	)	<b><u>MOTION TO DISMISS DEFENDANT</u></b>
	)	<b><u>FATHER ROBERT BEGIN PURSUANT</u></b>
	)	<b><u>TO FED. R. CIV. P. 25</u></b>
CATHOLIC DIOCESE OF	)	
CLEVELAND, et al.	)	
	)	
Defendants	)	

Pursuant to Fed. R. Civ. P. 25, Defendant, Father Robert Begin, by and through counsel, hereby submits to this Honorable Court this Motion to Dismiss.

The Notice of Suggestion of Death for Defendant Father Robert Begin was filed with this Court on August 15, 2022. (*See* Court's Docket at Doc. No. 39). Under Fed. R. Civ. P. 25, Plaintiff had ninety (90) days to file a Motion to Substitute from the date of filing the Notice of Suggestion of Death, thereby requiring the Motion to Substitute to be filed with this Court on or before November 14, 2022. Plaintiff failed to file the appropriate Motion to Substitute, thus, Defendant Father Robert Begin is entitled to a dismissal pursuant to Fed. R. Civ. P. 25.

Accordingly, Defendant Father Robert Begin requests that this Court issue an Order dismissing Defendant pursuant to Fed. R. Civ. P. 25.

A Brief in Support of this Motion is attached hereto and incorporated herein.

Respectfully submitted,

/s/ Beth A. Sebaugh

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## **BRIEF IN SUPPORT**

### **I. STATEMENT OF THE CASE AND FACTS**

Plaintiff Tatu Wadesisi (“Plaintiff”) filed her Original Complaint on March 16, 2022. (*See* Court’s Docket). On August 15, 2022, a Notice of Suggestion of Death was filed with this Court advising all parties, and this Court, that Defendant Father Robert Begin passed away on July 24, 2022. (*See* Court’s Docket at Doc. No. 39). The filing and service of the Notice of Suggestion of Death began the ninety-day period during which Plaintiff was required to file a Motion to Substitute Father Robert Begin’s successor or representative as a proper party in this case. (*See* Fed. R. Civ. P. 25(a)(1)). Plaintiff’s Motion to Substitute was to be filed with this Court no later than November 14, 2022, under Fed. R. Civ. P. 25(a)(1). Plaintiff did not file the Motion to Substitute within the ninety days set forth in Fed. R. Civ. P. 25. (*See* Court’s Docket).

### **II. LAW AND ARGUMENT**

Pursuant to Fed. R. Civ. P. 25(a)(1), “If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. **If the motion is not made within 90 days after the service of a statement noting the death, the action by or against the decedent must be dismissed.**” (Emphasis added). “The Court does not have discretion to excuse plaintiff’s failure to comply with the 90-day limit of [Fed. R. Civ. P. 25(a)(1),]” instead, “[the] rule directs the court to dismiss the action if substitution is not made within that time.” *Premoh v. City of Cincinnati*, Case N. 1:15-cv-265, 2016 U.S. Dist. LEXIS 63628, \*15 (S.D. Ohio 2016); *see also Joyce Mfg. Co. v. Midwest Inv. Servs. Grp., Inc.*, Case No. 1:17CV840, 2019 U.S. Dist. LEXIS 9243, \*6-7 (N.D. Ohio 2019) (court did not adopt magistrate’s ruling to enter judgment against a deceased person and instructed the party to comply with the requirements of Fed. R. Civ. P. and move to substitute within 90 days of the notice of death).

In this case, the Notice of Suggestion of Death for Defendant Robert Begin was filed and served through this Court's electronic filing system on August 15, 2022. (*See* Court's Docket at Doc. No. 39). Therefore, Plaintiff was required to file a Motion to Substitute under Fed. R. Civ. P. 25(a)(1) by November 14, 2022. *Id.* To date, Plaintiff has not moved to substitute Defendant Robert Begin's successor or representative as a proper party in this case, thus, Defendant Father Robert Begin must be dismissed pursuant to Fed. R. Civ. P. 25(a)(1). *See Premoh, supra.*

Accordingly, Defendant Father Robert Begin is entitled to a dismissal pursuant to Fed. R. Civ. P. 25(a)(1).

### III. CONCLUSION

For the reasons set forth above, Defendant Father Robert Begin requests that this Court enter an Order dismissing Defendant from this case.

Respectfully submitted,

/s/ Beth A. Sebaugh

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**CERTIFICATE OF SERVICE**

Pursuant to 5(B)(2)(f), the foregoing has been served by operation of the Court's electronic filing system and upon any party not receiving electronic service via ordinary U.S. Mail this 15th day of November 2022.

/s/ Beth A. Sebaugh

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